

ORIGINAL



0000004413

BEFORE THE ARIZONA CORPORATION COMMISSION

255P

COMMISSIONERS

RECEIVED

Arizona Corporation Commission

DOCKETED

MARC SPITZER, Chairman
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
MIKE GLEASON
KRISTIN K. MAYES

2004 MAY -4 P 2: 34

AZ CORP COMMISSION
DOCUMENT CONTROL

MAY - 4 2004

DOCKETED BY

IN THE MATTER OF COMPETITION IN THE
PROVISION OF ELECTRIC SERVICES
THROUGHOUT THE STATE OF ARIZONA.

DOCKET NO. RE-00000C-94-0165

IN THE MATTER OF THE STRANDED COST
FILING AND REQUEST FOR A WAIVER OF
CERTAIN PORTIONS OF THE RULES FILED BY
MOHAVE ELECTRIC COOPERATIVE, INC.

DOCKET NO. E-01750A-98-0467

IN THE MATTER OF THE FILING BY MOHAVE
ELECTRIC COOPERATIVE, INC. OF
UNBUNDLED AND STANDARD OFFER
SERVICE TARIFFS PURSUANT TO A.A.C. R14-
2-1606.

DOCKET NO. E-01750A-97-0701

IN THE MATTER OF THE STRANDED COST
FILING AND REQUEST FOR A WAIVER OF
CERTAIN PORTIONS OF THE RULES FILED BY
TRICO ELECTRIC COOPERATIVE, INC.

DOCKET NO. E-01461A-98-0466

IN THE MATTER OF THE FILING BY TRICO
ELECTRIC COOPERATIVE, INC. OF
UNBUNDLED AND STANDARD OFFER
SERVICE TARIFFS PURSUANT TO A.A.C. R14-
2-1606.

DOCKET NO. E-01461A-97-0696

IN THE MATTER OF THE STRANDED COST
FILING AND REQUEST FOR A WAIVER OF
CERTAIN PORTIONS OF THE RULES FILED BY
GRAHAM COUNTY ELECTRIC COOPERATIVE,
INC.

DOCKET NO. E-01749A-98-0468

IN THE MATTER OF THE STRANDED COST
FILING AND REQUEST FOR A WAIVER OF
CERTAIN PORTIONS OF THE RULES FILED BY
DUNCAN VALLEY ELECTRIC COOPERATIVE,
INC.

DOCKET NO. E-01703A-98-0469

IN THE MATTER OF THE STRANDED COST
FILING AND REQUEST FOR A WAIVER OF
CERTAIN PORTIONS OF THE RULES FILED BY
SULPHUR SPRINGS VALLEY ELECTRIC
COOPERATIVE, INC.

DOCKET NO. E-01575A-98-0472

IN THE MATTER OF THE FILING BY SULPHUR
SPRINGS VALLEY ELECTRIC COOPERATIVE,
INC. OF UNBUNDLED AND STANDARD OFFER
SERVICE TARIFFS PURSUANT TO A.A.C. R14-
2-1606.

DOCKET NO. E-01575A-97-0706

PROCEDURAL ORDER

BY THE COMMISSION:

On December 22, 2003, Phelps Dodge Mining Company, Successor in interest to Cyprus Climax Metals Company ("Phelps Dodge"), ASARCO Incorporated, and Arizonans for Electric Choice and Competition ("AECC") (collectively "AECC et al") filed an Application for the Scheduling of a Hearing to Determine the Stranded Cost. AECC et al requests that the Arizona Corporation Commission ("Commission") schedule a hearing for the purpose of determining the Stranded Cost, if any, to be collected by Trico Electric Cooperative, Inc. ("Trico"), Duncan Valley Electric Cooperative, Inc. ("Duncan"), Graham County Electric Cooperative, Inc. ("GCEC"), Sulphur Springs Valley Electric Cooperative ("SSVEC"), and Mohave Electric Cooperative, Inc. ("Mohave") (collectively "Distribution Cooperatives") and to open such Distribution Cooperatives' service territories to competition. AECC asserts that because the Commission has not yet conducted hearings on the Distribution Cooperatives' applications for Stranded Cost recovery, the customers of the Distribution Cooperatives are not eligible for competition electric services pursuant to A.C.C. R14-2-1602A.

On January 9, 2004, Duncan and GCEC filed a Response to AECC et al's Application. After describing events that occurred subsequent to the Commission adopting the Retail Electric Competition Rules ("Rules"), Duncan and Graham argue that there is no reason to commit the resources of the parties or the Commission to a proceeding based on a set of rules' assumptions which are in the process of being changed. They further argue there is no reason to force the Distribution Cooperatives to incur substantial costs complying with a set of rules which are being actively re-evaluated. Duncan/GCEC argues that the Application makes no sense in light of the fact that there is no retail competition, and there is no justifiable reason to require the Distribution Cooperatives to incur substantial expenses only to "stand and wait".

On January 12, 2004, Trico filed a Response and joined with Duncan and GCEC in opposing AECC's request for the reasons stated in the Duncan/GCEC Response. Trico noted too that the Distribution Cooperatives appealed Decision No. 59943 (December 26, 1996) which adopted the Rules. The Distribution Cooperatives are challenging the constitutionality of the entire stranded cost

1 process. Trico argues that to grant the AECC et al Application may constitute an invasion of the
2 appellate courts' jurisdiction and impair the judicial appellate process. In addition, Trico argues, it
3 would be unfair to require the Distribution Cooperatives to comply with the provisions of the Rules
4 should the appellate courts ultimately find key aspects of the Rules to be wholly or partially unlawful.

5 On January 12, 2004, SSVEC filed its Response to AECC's Application and states that for the
6 reasons set forth in the Duncan/GCEE and Trico Responses, the Application should be denied until
7 various other issues concerning the Rules have been resolved.

8 On January 20, 2004, AECC et al filed a Reply to the Responses of Duncan, GCEEC, SSVEC
9 and Trico. AECC argues that Commission public policy supports development of retail competition.
10 AECC states that the lack of robust retail competition in the territories of TEP, APS and SRP are due
11 to inadequate shopping credits and that as the Competition Transition Charge ends and as new
12 generation sources are available, direct access will become a viable alternative. AECC asserts that
13 the cost to implement retail competition is not at issue in these proceedings as the Commission has
14 already made a public determination that retail competition can provide benefits to Arizona's
15 ratepayers. Furthermore, AECC et al argues that for the Commission to delay opening the
16 Distribution Cooperatives' territories pending resolution of the appeals is contrary to the provision of
17 A.R.S. §40-254(F) which provides that Commission rules and orders remain in effect pending the
18 decision of the courts. AECC et al states that in activating the Distribution Cooperatives' Stranded
19 Cost dockets the Commission can coordinate the proceeding with the upcoming rulemaking docket so
20 that implementation of direct access can coincide with changes to retail competition, if any.

21 On January 22, 2004, Commission Utilities Division Staff ("Staff") filed a Response to
22 AECC's Application. Staff opposed AECC et al's request, although not for all the reasons advanced
23 by the Distribution Cooperatives. Staff states that in Decision No. 65154, also known as the "Track
24 A" Decision, the Commission instructed Staff to re-examine the existing electric competition rules.
25 Staff states it has begun that process and has solicited and received comments from interested parties
26 and held an initial workshop in December 2003 to discuss possible Rule revisions. Staff believes that
27 it is unwise to begin proceedings to open the Distribution Cooperatives' territories to competition
28 while at the same time reconsidering various aspects of the existing rules. Staff asserts the

1 proceedings that AECC et al seeks to initiate may interfere with ongoing efforts to re-examine the
2 Rules by taking time away from these efforts and redirecting it to other proceedings. Staff is
3 concerned that the Commission could expend valuable time and resources to process the stranded
4 cost cases under existing Rules only to have those results made irrelevant by subsequent Rule
5 amendments.

6 On January 30, 2004, AECC filed a Reply to Staff's Response. AECC et al argues that
7 transactions in the Distribution Cooperatives' service territories should not be held hostage to
8 conjecture and supposition or regulatory lag regarding possible changes to the rules.

9 On February 9, 2004, Duncan and GCEC filed a Supplemental Response, requesting the
10 Administrative Law Judge take official notice of the January 27, 2004 Decision of the Arizona Court
11 of Appeals in Phelps Dodge Corp. et al v. Arizona Electric Power Cooperative, Inc., 1 CA-CV 01-
12 0068. Duncan and GCEC assert that the Court of Appeals invalidated certain Rules on constitutional,
13 statutory or Administrative Procedure Act grounds, affirmed certain others and vacated all
14 Commission decisions previously issued which granted Certificates of Convenience and Necessity to
15 ESPs. They note that although a Petition for Review may be filed with the Arizona Supreme Court,
16 the further uncertainty concerning the Rules and other aspects of electric competition created by the
17 Decision reinforces the arguments that the Application should be denied.

18 On February 6, 2004, Staff also requested the Hearing Division to take official notice of the
19 Court of Appeals Decision. At that time, Staff stated it was too early to know if review of the
20 Decision would be sought or how the Decision may impact these proceedings. Staff requested that
21 these dockets continue to be stayed.

22 On February 17, 2004, AECC et al filed a Response to Staff's Request for Official Notice.
23 AECC did not oppose taking official notice, but objected to Staff's request to continue the stays on
24 these proceedings. In light of the Court's discussion of A.A.C. R14-2-1602, whether the decision is
25 appealed further is not sufficient argument to support continuing the stay of these proceedings.

26 At this juncture, sufficient time has elapsed since the Court of Appeals Decision and the
27 Commission started its re-evaluation of the Rules under the "Track A" Decision that the parties
28 should have a better ability to assess the status of the Rules and how they impact this Application.

Consequently, a procedural conference to discuss the effect of the Court's Decision and anticipated rule changes is in order.

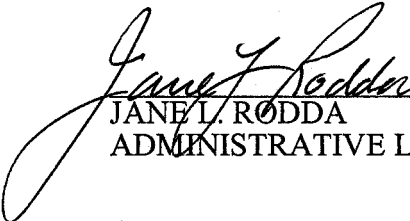
On January 28, 2004, Constellation NewEnergy, Inc. ("Constellation"), a competitive retail electric service provider serving commercial and industrial customers, and Strategic Energy, LLC ("Strategic"), an energy management company that provides electric load aggregation and power supply coordination services, filed for Leave to Intervene in the these matters. No party opposed their intervention. Thus, their intervention should be granted.

IT IS THEREFORE ORDERED that a procedural conference for the purpose of oral argument on the Application, and to update the Commission on the status of the Retail Competition Rules shall commence on June 2, 2004, at 1:30 p.m., or as soon thereafter as is practicable, at the Commission's Phoenix offices, 1200 West Washington, Phoenix, Arizona.

IT IS FURTHER ORDERED that the request to intervene of Constellation and Strategic is granted.

IT IS FURTHER ORDERED that the Presiding Officer may rescind, alter, amend, or waive any portion of this Procedural Order either by subsequent Procedural Order or by ruling at hearing.

DATED this 4th day of May, 2004.


JANE L. RODDA
ADMINISTRATIVE LAW JUDGE

Copies of the foregoing mailed
this 4 day of May, 2004 to:

C. Webb Crocket
Fennemore Craig
3003 N. Central Avenue, Suite 2600
Phoenix, Arizona 85012-2913
Attorneys for Phelps Dodge and AECC

Michael M. Grant
Todd C. Wiley
2575 East Camelback Road
Phoenix, Arizona 85016-9224
Attorneys for Duncan and GCEC

Russell E. Jones
Waterfall Economidis Caldwell hanshaw
& Villamana
5210 East Williams circle
Suite 800
Tucson, Arizona 85711-7497
Attorneys for Trico

Christopher Hitchcock
Law Offices of Christopher Hitchcock PLC
Post Office Box 87
Bisbee, Arizona 85603-0087
Attorneys for SSVEC

1 Michael Curtis
2 Martinez & Curtis
3 2712 North 7th Street
4 Phoenix, Arizona 85006-1003
5 Attorneys for Mohave Electric Cooperative

6 Jeffrey B. Guldner
7 Snell & Wilmer
8 One Arizona Center
9 400 East Van Buren
10 Phoenix, Arizona 85004-2202
11 Attorneys for APS

12 Douglas C. Nelson
13 Douglas C. Nelson PC
14 7000 North 16th Street
15 Phoenix, Arizona 85020-5547
16 Attorneys for Commonwealth
17 ACA
18 2627 North 3rd Street
19 Suite Two
20 Phoenix, Arizona 85004

21 Jack Shilling
22 Duncan Valley Electric Cooperative
23 P.O. Box 440
24 222 N. Highway 75
25 Duncan, Arizona 85534

26 Steven Lines
27 Graham County Electric Cooperative
28 P.O. Drawer B
9 W. Center
Pima, Arizona 85543

Patricia Cooper
Arizona Electric Power Cooperative, Inc.
Post Office Box 670
1000 South Highway 80
Benson, Arizona 85602

Brown & Bain PA
2901 North Central Avenue
Phoenix, Arizona 85001-0400
Attorneys for Illinova

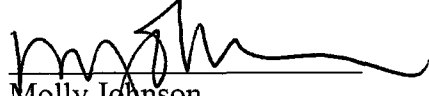
Marvin S. Cohen
Charlene Gibson Robertson
Sacks Tierney, PA
4250 North Drinkwater Boulevard, 4th Floor
Scottsdale, Arizona 85251-3647
Attorneys for Constellation and Strategic

Mr. Christopher Kempsey, Chief Counsel
Legal Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, Arizona 85007

Mr. Ernest Johnson, Director
Utilities Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, Arizona 85007

ARIZONA REPORTING SERVICE, INC.
2627 N. Third Street, Suite Three
Phoenix, Arizona 85004-1104

By:


Molly Johnson
Secretary to Jane L. Rodda